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05-385

FILED
DEC - 9 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Benny Cohen,

Petitioner(s)

vs.

Allstate Insurance Company,

Respondent(s)

On Petition For A Writ of Certiorari to

The State of New York Court of Appeals

PETITION FOR REHEARING

Benny Cohen
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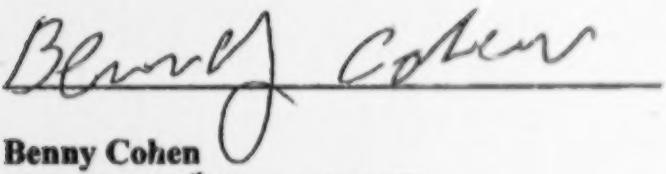
Brooklyn New York 11230
(718) 258 - 1744

Rule 44

Benny Cohen certifies that the petition for re-hearing is limited to substational grounds that previously represented and is restricted to the grounds specified in supreme court rule forty-four and is presented in good faith and not for delay.

Dated; Brooklyn, New York
December 5, 2005

Respectfully submitted,



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Petition for Rehearing,

1. The Supreme Court of the State of New York Appellate Division; Second Judicial Department based their decision on CPLR 3211(A)7; and CPLR 3013; Clark- Fitzpatrick Inc. v. Long Island Railroad Company, 70 N.Y.2d; Dimauro v. Metropolitan Suburban Bus Auth, 105 AD2d 236, 239). The Court dismiss the complaint on the law, and that there was no causal nexus between any such negligence and the plaintiff's claimed injuries. Plaintiff did show causal nexus and in the Following argument will show to this Court the requirements necessary for Jurisdiction, and connection for Federal intervention.

2. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc. No 80.327

Hon. Justice Rehnquist delivered the opinion of the Court; Stated that in this manner does Art. III limits the Federal Judicial power and explaining the Court's view on important Constitution facts (a) injury in fact (b) show that he personally has suffered some actual or threatened injury as a result of putatively illegal conduct of the defendant (c) fairly can be traced to the challenged action (d) is likely to be redressed by a favorable decision.... The plaintiff in his past and present arguments did and will show this Court that the above opinion written by Hon. Justice Rehnquist, does applies to plaintiff case. Hon. Justice Rehnquist, did not mention in his Court's opinion the view that these requirements must be applied only to Federal issues. Therefore logically it must to applied to both Federal and State Courts. Hon. Justice Rehnquist also brings two cases to support the opinion of the Court. Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979), Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38, 41 (1976)

3. BEVERLY SOMMER, ET AL., RESPONDENTS-APPELLANTS, v. FEDERAL SIGNAL CORPORATION, ET AL., RESPONDENTS-
79 N.Y.2d 540, 593 N.E.2d 1365, 583 N.Y.S.2d 957 (1992).

In this case the Court said that **"In disentangling tort and contract claims, we have also consider the nature of the injury, the manner in which the injury occurred and the resulting harm".**(See plaintiff petition for writ certiorari Pages 11-12). What the Court stated above was in conflict with the same State Court deciding plaintiff' case.

And in **William C. Brandon.** The above case the New York Court of Appeal stated that a tort may arise from a breach of a legal duty independent of a contract. The Court stated. "may be subject to tort liability for failure to exercise reasonable care" .The Court gave an example stating "We rejected plaintiff's attempt to ground in tort a claim that defendants supplied defective floor tiles, noting that the injury (delamination of tiles) was not personal injury or property damage; there was no abrupt cataclysmic occurrence; and the harm was simply replacement cost of the product". In plaintiff's case there is a tort arising from a contract because there is no "defective floor tiles" and the harm is **personal injury** and by the defendant's lack of investigation and termination of plaintiff's medical benefits, plaintiff was refused an operation which caused his condition to become worse and has disabled him totally, therefore the Court which dismissed plaintiff 's case citing (id.; Clark- Fitzpatrick, 70 NY2d at 389-390, supra),is in conflict to the above statement. (See plaintiff petition for writ certiorari Pages 11-12)

4. 3 No. 50 In the Matter of William C. Brandon Respondent, Nationwide Mutual Insurance Company, Appellant.

In the above case the State of New York Supreme Court of Appeals, in their Footnotes said the following.

"Nationwide's procedures for handling no-fault and SUM claims doubtless differ, and we do not say that notice of one kind of claim can substitute for the other. Nevertheless, the least that can be said on this record is that neither Nationwide's treatment of the no-fault claim nor its treatment of the SUM claim suggests that Nationwide took any active interest in investigating, settling or setting reserves for petitioner's claim. The emphasis in both cases was solely on determining whether late notice might relieve Nationwide of its coverage obligations." And was in conflict to plaintiff case by not taking any active interest in investigating, plaintiff's Doctor recommendation for surgery.

5. http://caselaw.lp.findlaw.com/data/constitution/article03/10.html

Cases and Codes : U.S. Constitution : Article III .

In this web site Constitution cases and codes brings plaintiff's argument and requirement in full . In summary, the U.S Supreme Court does not have a clear criteria fo, standing "and the results it achieves are often at variance [327]

6. (a) Defendant was Negligent in bad-faith denying plaintiff medical claims. (b) Defendant's own admission in Third Party Summons (See App. 10 – 28). (c) Hon. Judge Lewis L. Douglass two times denieddefendant's motion to dismiss. (d) plaintiff is given standing to assert his claims and his interest is legally protected by the Constitution of the United State of

America Article III. Judicial Department. (e) In examination before trial defendant admits to the fact that they did receive Dr. Brisson's letter that recommended surgery, and to the fact that the Hospital made phone call asking if benefits were available to perform the surgery. (f) Hon. Justice Rehnquist delivered the opinion of the Court regarding Art. III. Hon. Justice Rehnquist's opinion is relevant to plaintiff's arguments

7. The plaintiff did suffer actual injury that can fairly be traced to the challenged action of defendant. As results of illegal conduct of the defendant, the defendant is required by law to make sure and investigate before issuing denial. Not only the defendant did not investigate, the defendant knew from Doctor Brisson (App. 35-36) the plaintiff's condition and the fact that the plaintiff needed surgery. On the day of surgery, the hospital called the defendant for verification of payment for surgery which the defendant disproved, (See App.37-38),. Until the day of surgery, the defendant did not notify plaintiff that they denied him medical services.

8. In examination before trial plaintiff ask Q.. "let me here from you saying clear that you didn't know that I scheduled for a surgery, that's what you saying?" A. "In this No-Fault file there is nothing about surgery being scheduled . In the notes that we got from Dr. Brisson after the IME from Dr. Paul it says recommend surgery.It does not state that it was scheduled. In your discovery you show something with regards to Cabrini Medical Hospital, the pre admission that you were discussing. It's not in this No-Fault file. No one knew that you were scheduled for surgery except for possibly a phone call that Cabrini made to Allstate. They spoke to someone , I don't know who, asking if your benefits were available."

9. This is one more proof to show that the defendant knew plaintiff condition, and was obligated to make sure and investigate before issuing denial of benefits. And it does support the Constitution Article III. Judicial Department, "Actual or threatened injury that can fairly be traced to the challenged action of defendant And that the injury is likely to be redressed by a favorable decision".

U.S Court of Appeals for the Ninth Circuit
Case name; Bras v. California Public Utilities Commission
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IV. "The likelihood of future injury in the instant case is far too remote to meet established constitutional standards. Standing is founded "in concern about the proper--and properly limit-ed--role of the courts in a democratic society. " Warth, 422 U.S. at 498. When an individual seeks to avail himself of the federal courts to determine the validity of a legislative action, he must show that he "is immediately in danger of sustaining a direct injury." Ex parte Levitt, 302 U.S. 633, 634 (1937). This requirement is necessary to ensure that "federal courts reserve their judicial power for concrete legal issues, pres-ented in actua l cases, not abstractions.' "Associated General Contractors of California v. Coalition for Economic Equity,950 F.2d 1401, 1406 (9th Cir. 1991) (quoting United Public Workers, 330 U.S. at 89), cert. denied, 112 S. Ct.1670(1992). Bras offers us a hypothetical injury, abstract in nature. We should not exceed our judicialauthority by holding that he has standing".
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10. In the above case the Court say that plaintiff must show that he "is immediately in danger of sustaining a direct injury." Which the plaintiff show. Plaintiff's is on pain medication that are very dangers, and the fact that plaintiff's condition is deteriorated and still deteriorating, Plaintiff show requirement to allow Federal intervene and requirement necessary Jurisdiction to be applied to this case. Respectfully.